

JUN 15 2006

FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

2006 JUN 15 AM 10

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL:

05L-15

DATE OF REFERRAL:

May 3, 2005

DATE ACTIVATED:

January 30, 2006

EXPIRATION OF SOL:

July 1, 2008

SOURCE: Internally Generated

RESPONDENTS: Ravenel for U.S. Senate and
Ben Whaley Le Clercq, in his official capacity as treasurer
Thomas Jonathan Jackson Ravenel

RELEVANT STATUTES

AND REGULATIONS:

2 U.S.C. § 434(a)(6)(B)

2 U.S.C. § 434(b)(2) and (4)

11 C.F.R. § 104.3(a)

11 C.F.R. § 104.3(b)

11 C.F.R. § 100.19(g)

11 C.F.R. § 400.22(a)

11 C.F.R. § 400.25

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Ravenel for U.S. Senate, the principal campaign committee of 2004 South Carolina Senate candidate Thomas Jonathan Jackson Ravenel, and Ben Whaley Le Clercq, in his official capacity as treasurer (the "Committee"), for two reasons. First, after timely filing the initial notification required by the "Millionaires' Amendment" of the Bipartisan Campaign Reform Act, the Committee did not timely file five 24-Hour Notices of Expenditure from Candidate's Personal Funds ("FEC Form 10") for additional expenditures from Mr. Ravenel's personal funds exceeding \$10,000. Second, the Committee

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1 amended its 2003 Year-End Report to disclose additional receipts totaling \$33,969.36, a 49%
2 increase, and additional disbursements totaling \$105,121.99, a 24% increase, over the financial
3 activity reported in its original 2003 Year-End Report.

4 Based on a review of the relevant disclosure reports and available information, this Office
5 recommends that the Commission find reason to believe that the Committee violated the Federal
6 Election Campaign Act of 1971, as amended (the "Act"), in connection with its late filing of five
7 FEC Form 10s and misreporting of receipts and disbursements. Because the reporting
8 requirements of the Millionaires' Amendment also create specific obligations for candidates, this
9 Office recommends that the Commission find that Thomas Jonathan Jackson Ravenel violated
10 the Act.

11 **II. DISCUSSION**

12 **A. Late Reporting of Personal Funds Expenditures**

13 **1. Factual Background**

14 In May 2003, Thomas Jonathan Jackson Ravenel filed FEC Form 2, Statement of
15 Candidacy, in connection with his candidacy for the United States Senate from South Carolina.
16 As part of the Form 2, Mr. Ravenel declared his intention to spend \$1,000,000 above the
17 applicable threshold amount in both the primary and general elections. He subsequently lost the
18 June 8, 2004 primary election. In all, Mr. Ravenel made \$2,936,500 in expenditures from his
19 personal funds, all designated for the primary election.

20 On June 30, 2003, Mr. Ravenel loaned the Committee \$950,000, triggering and
21 exceeding the reporting threshold requirement of \$553,840, which required the filing of FEC
22 Form 10. *See* 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). The Committee timely filed
23 the requisite FEC Form 10 on July 1, 2003.

1 The Committee disclosed in its 2003 October Quarterly Report, filed on October 20,
2 2003, the receipt of a loan from the candidate's personal funds totaling \$50,000, which had been
3 received on September 30, 2003. On November 18, 2003, RAD sent the Committee a Request
4 for Additional Information ("RFAI") referencing the report, and noting the Committee's failure
5 to file the FEC Form 10 for the loan. In response, the Committee filed the FEC Form 10 on
6 December 17, 2003, 77 days late. Thereafter, the Committee filed timely FEC Form 10s for
7 seven additional expenditures from the candidate's personal funds made before the June 8, 2004
8 primary.¹

9 Following the primary that Mr. Ravenel lost, the candidate made a \$50,000 expenditure
10 from personal funds on June 10, 2004, designated for the primary. The Committee filed the FEC
11 Form 10 on June 14, 2004, three days late. Subsequently, Mr. Ravenel made three additional
12 expenditures from his personal funds to his Committee, all designated for the primary election,
13 for which neither he nor the Committee filed timely FEC Form 10s.

14 Specifically, in its 2004 July Quarterly Report, the Committee reported candidate
15 contributions of \$45,000 and \$40,000 made on June 15, 2004 and June 30, 2004, respectively.
16 RAD sent the Committee an RFAI noting its failure to file FEC Form 10s for these additional
17 expenditures from the candidate's personal funds, and on October 14, 2004, the Committee filed
18 FEC Form 10s for these expenditures, 120 and 105 days late, respectively. Although the
19 Committee had previously filed an FEC Form 10 for a post-primary expenditure from the
20 candidate's personal funds on June 14, 2004, as noted above, the Committee subsequently
21 asserted that it was not aware that FEC Form 10s were required for expenditures made after the

¹ These expenditures were: an April 1, 2004 loan of \$150,000; an April 15, 2004 loan of \$300,000; an April 21, 2004 loan of \$200,000; a May 5, 2004 loan of \$300,000, a May 19, 2004 loan of \$300,000; a May 27, 2004 contribution of \$250,000; and a June 2, 2004 contribution of \$285,000, all designated for the primary election.

1 date of the primary election. On October 14, 2004, the Committee also filed its 2004 October
2 Quarterly Report, which disclosed the receipt on August 3, 2004 of a contribution from the
3 candidate in the amount of \$16,500, designated for the primary. The corresponding FEC Form
4 10 was filed on October 13, 2004, 71 days late.²

5 2. Analysis

6 Although Mr. Ravenel and the Committee timely filed the initial FEC Form 10, as well as
7 some subsequent ones, including one filed after the primary election, *see* Attachment 1, five
8 other FEC Form 10s for expenditures from the candidate's personal funds in excess of \$10,000
9 were not filed timely. Candidates who make expenditures from personal funds to their
10 campaigns in excess of a specified threshold amount must meet particular reporting and
11 disclosure requirements.³ Not later than 24 hours after a Senate candidate "makes or obligates to
12 make an aggregate amount of expenditures from personal funds in excess of 2 times the
13 threshold amount in connection with any election, the candidate shall file a notification" with the
14 Secretary of the Senate, the Commission, and each candidate in the same election.
15 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a).⁴ After the initial notification threshold is
16 triggered, the Commission's regulation requires the filing of additional FEC Form 10s "when the
17 candidate makes expenditures from personal funds *in connection with the election* exceeding
18 \$10,000." *See* 11 C.F.R. § 400.22(a) (emphasis added); *see also* 11 C.F.R. § 400.4(a)(1)

² A chart that accompanied the RAD Referral showing all Mr. Ravenel's disclosed loans and contributions designated for the 2004 primary is attached. *See* Attachment 1. Please note that RAD updated this chart to correct minor discrepancies in the category of "Number of days late" since the original RAD Referral.

³ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by the candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 434(a)(6)(B)(i), 11 C.F.R. § 400.4

⁴ The threshold for United States Senate candidates is the sum of \$150,000 plus an amount equal to the voting age population of the state multiplied by four cents. *See* 11 C.F.R. § 400.9. In the case of South Carolina in 2004, the threshold amount was \$276,920 (\$150,000 + (3,173,000 x \$0.04)). Thus, two times the threshold amount is \$553,840.

(defining "[e]xpenditure from personal funds" as including an expenditure "for the purpose of influencing the election in which he or she is a candidate"). Each notification must include the date and the amount of each expenditure and the total amount of expenditures from personal funds that the candidate has made or obligated to make, with respect to an election. 2 U.S.C. § 434(a)(6)(B)(v); 11 C.F.R. § 400.23. Although the FEC Form 10 is signed by the committee treasurer, the candidate is responsible for ensuring that it is filed in a timely manner. 11 C.F.R. § 400.25.

Here, the candidate's post-primary expenditures from personal funds were not only designated for the primary, the only election in which he participated, but were used to retire primary election campaign debt. Under these circumstances, the post-primary expenditures from the candidate's personal funds were both "in connection with" the primary and "for the purpose of influencing" the primary, thus requiring the filing of FEC Form 10s. *See Federal Election Commission v. Haley*, 852 F.2d 1111, 1115 (9th Cir. 1988) (stating that "funds raised after an election to retire election campaign debts are just as much *for the purpose of influencing* an election and *in connection with* the election as are those contributions received before the election") (emphasis added); *see also* MUR 5607 (Socas for Congress) (where the Commission found reason to believe and conciliated with respondents who filed a post-primary FEC Form 10 late).⁵

⁵ As the statute and Commission's regulations make clear, in this situation, Mr. Ravenel's opponents could not accept any contributions under the increased limits once Mr. Ravenel ceased to be a candidate by becoming ineligible for election by operation of law, *i e*, by losing the primary election. *See* 2 U.S.C. § 441a(i)(2)(B); 11 C.F.R. § 400.32(a)(2)(ii)

Thus, even though Mr. Ravenel had a continuing obligation to file post-primary FEC Form 10s, his opponents were not permitted to accept enhanced contributions once Mr. Ravenel lost the primary election. We do not address here whether, in a situation where a winning primary candidate continues to pay down primary debt, thereby absolving his general election committee from that responsibility, those expenditures should be counted for the general election for purposes of the Millionaires' Amendment. The possibility of such a scenario, however, bolsters the need for continued filings of post-primary FEC Form 10s that are designated for the primary election.

Accordingly, this Office recommends that the Commission find reason to believe that Ravenel for U.S. Senate and Ben Whaley Le Clercq, in his official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a). Since the statute and regulations obligate the candidate to ensure that appropriate filings are made with respect to his expenditures from personal funds, this Office also recommends that the Commission find reason to believe that Thomas Jonathan Jackson Ravenel violated 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.25.

B. Failure to Disclose all Financial Activity

1. Factual Background

After the Committee filed its 2003 Year-End Report, it filed two amendments, ultimately disclosing an additional \$33,969.36 in total receipts and \$105,121.99 in total disbursements over the amounts disclosed in the original Report. The Committee filed its original 2003 Year-End Report on January 29, 2004, disclosing total receipts of \$68,025.04 and total disbursements of \$443,106.71. On April 8, 2004, the Committee filed an amended 2003 Year-End Report, disclosing total receipts and disbursements of \$80,506.52 and \$449,809.97, respectively. After the election, on July 15, 2004, the Committee filed another amended 2003 Year-End Report, disclosing total receipts of \$102,895 and total disbursements of \$548,228.70.

On August 17, 2004, RAD sent an RFAI to the Committee requesting an explanation for its failure to disclose the additional activity on the original 2003 Year-End Report. On September 16, 2004, the Committee provided the following written explanation:

As you know, during the course of the campaign we made changes in our reporting software and separately undertook a comprehensive review of reporting records. Resulting errors were corrected and incorporated into amended reports that we subsequently filed with the Commission. The changes indicated in the report in question are the result of that effort and are an accurate reflection of the committee's activity.

2. Analysis

Each treasurer of a political committee must file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(a). For non-election calendar years, principal campaign committees of Senate candidates must file the report for the quarter ending December 31 no later than January 31 of the following calendar year. 2 U.S.C. § 434(a)(2)(B). The Year-End Report must disclose for the reporting period and calendar year the total amount of all receipts and all disbursements. 2 U.S.C. §§ 434(b)(2) and (4); 11 C.F.R. §§ 104.3(a)(2) and (b)(1). It must also identify each person who makes a contribution to the reporting committee during the reporting period whose contributions have an aggregate amount or value in excess of \$200 within the calendar year. 2 U.S.C. § 434(b)(3)(A). The report must also identify each expenditure made to meet candidate or committee operating expenses and the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made, together with the date, amount, and purpose of each expenditure. 2 U.S.C. §§ 434(b)(4)(A) and 434(b)(5)(A).

This Office reviewed the Committee's original and amended 2003 Year-End Reports to determine what accounted for the accretion of \$33,969.36 in total receipts and \$105,121.99 in total disbursements between the original and last amended reports. Based on that review, it appears that \$12,320 of receipts not reported in the original 2003 Year-End Report consist of several in-kind contributions for catering, tent rental, plane transportation, printing, and food and beverage costs. The Committee reported these receipts in the amended report filed on April 8, 2004 as in-kind contributions received between November 25, 2003 and December 12, 2003.

Additionally, in the original 2003 Year-End Report, the Committee reported a receipt from itself in the amount of \$10,838.84, made on December 31, 2003. In the amended 2003

1 Year-End Report filed on April 8, 2004, the Committee attributed that receipt to Smith Barney.
2 In the last amended 2003 Year-End Report filed on July 15, 2004, the Committee increased the
3 receipt to \$21,701 and disclosed that it represented capital gains and interest. In addition, in that
4 Report, the Committee added a second receipt from Smith Barney in the amount of \$11,525,
5 made on November 30, 2003, also for capital gains and interest. Taken together, these
6 aforementioned transactions account for the bulk of the \$33,969.36 discrepancy in receipts
7 between the original and final amended 2003 Year-End Report.⁶

8 With respect to disbursements, the total increase between the original and last amended
9 2003 Year-End Reports was \$105,121.99. Most of this difference is due to an omission of one
10 transaction -- a \$104,976 disbursement to Media Solutions on October 3, 2003, first reported in
11 the last amended 2003 Year-End Report, filed on July 15, 2004.

12 Based on the above, this Office recommends that the Commission find reason to believe
13 that Ravenel for U.S. Senate and Ben Whaley Le Clercq, in his official capacity as treasurer,
14 violated 2 U.S.C. § 434(b)(2) and (4) by misreporting receipts and disbursements in the original
15 2003 Year-End Report.

16 **III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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⁶ A less significant discrepancy was a \$500 contribution on December 19, 2003 that appeared only on the original Report.

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Ravenel for U.S. Senate and Ben Whaley Le Clercq, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iv); 434(b)(2) and (4); and 11 C.F.R. § 400.22(a).
3. Find reason to believe that Thomas Jonathan Jackson Ravenel violated 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.25.
- 4.
5. Approve the attached Factual and Legal Analyses.
6. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel

6/15/06
Date

BY: Susan L. Lebeaux
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Attachments

1. Chart of Candidate Expenditures from Personal Funds for 2004 Primary Election
- 2.
- 3.
- 4.

Ravenel for U.S. Senate (C00386953)
Candidate Expenditures from Personal Funds for 2004 Primary Election

Expenditure Amount	Type of Expenditure	Receipt Date Listed On Report	Report Which Expenditure is Disclosed On	Aggregate Total for Primary Election	Form 10 Filed?	Date Form 10 Filed	Number of days late
\$950,000.00	Loan	6/30/03	Q2 2003	\$950,000.00	Y	7/1/03	Filed Timely
\$50,000.00	Loan	9/30/03	Q3 2003	\$1,000,000.00	Y	12/17/03	77
\$150,000.00	Loan	4/1/04	12P 2004	\$1,150,000.00	Y	4/2/04	Filed Timely
\$300,000.00	Loan	4/15/04	12P 2004	\$1,450,000.00	Y	4/16/04	Filed Timely
\$200,000.00	Loan	4/21/04	12P 2004	\$1,650,000.00	Y	4/22/04	Filed Timely
\$300,000.00	Loan	5/5/04	12P 2004	\$1,950,000.00	Y	5/6/04	Filed Timely
\$300,000.00	Loan	5/19/04	12P 2004	\$2,250,000.00	Y	5/20/04	Filed Timely
\$250,000.00	Contribution*	5/27/04	Q2 2004	\$2,500,000.00	Y	5/27/04	Filed Timely
\$285,000.00	Contribution*	6/2/04	Q2 2004	\$2,785,000.00	Y	6/3/04	Filed Timely
\$50,000.00	Contribution*	6/10/04	Q2 2004	\$2,835,000.00	Y	6/14/04	3
\$45,000.00	Contribution*	6/15/04	Q2 2004	\$2,880,000.00	Y	10/14/04	120
\$40,000.00	Contribution*	6/30/04	Q2 2004	\$2,920,000.00	Y	10/14/04	105
\$16,500.00	Contribution	8/3/04	Q3 2004	\$2,936,500.00	Y	10/14/04	71

Note. All loans and contributions were designated for the Primary Election, held on June 8, 2004.